

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 16, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1663

Cir. Ct. No. 2011TR7630

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRAVIS M. RANTA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
JAMES EVENSON, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Travis M. Ranta appeals a judgment of conviction for operating a motor vehicle while under the influence (OWI), first

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

offense. Ranta argues the circuit court erred in denying his motion to suppress the results of a preliminary breath test (PBT) because the arresting officer lacked probable cause to believe that Ranta violated the OWI statute, and therefore, lacked authority to administer the PBT pursuant to WIS. STAT. § 343.303. For the reasons we explain below, we affirm.

BACKGROUND

¶2 The following facts are undisputed and taken from the suppression hearing. At some time after 5:50 p.m. on August 13, 2011, Officer Patrick Cowan responded to a disturbance at a campsite at the Devil's Lake State Park. At the campsite, Officer Cowan saw opened cans of alcohol and a parked Ford Ranger that contained an opened can of alcohol. Officer Cowan encountered Ranta who explained that the parked vehicle and the opened cans of alcohol belonged to him. Ranta admitted that he was drinking with underage individuals at the campsite.

¶3 Around 7:05 p.m., Officer Kenneth Lane was called to the campsite. Officer Lane spoke to Ranta and determined that he was intoxicated because he slurred his speech, smelled of alcohol, staggered around the campsite and engaged in "belligerent, uncooperative [and] loud" behavior.

¶4 Around 7:20 p.m., Officer Cowan administered a PBT to determine whether Ranta would be able to drive the Ford Ranger out of the park. The PBT indicated that Ranta had a blood alcohol content of .156. Officer Cowan informed Officer Lane of the results of the PBT. Officer Lane told Ranta that one of the individuals at the campsite who was not intoxicated might be able to drive Ranta's Ford Ranger out of the park. Ranta angrily responded that, "nobody's driving that truck but me." Officer Lane informed Ranta that he was prohibited from driving

the vehicle and suggested that he ask a friend who had not been drinking to drive the Ford Ranger. After Ranta agreed to do so, the officers left the campsite.

¶5 About an hour later, Officer Cowan was called to a disturbance at a concessions store not far from the campsite. Officer Cowan questioned a witness about the disturbance and determined, based on the witness's statement, that Ranta was involved. As Officer Cowan was about to leave the store, he saw the Ford Ranger speed past the store. Officer Cowan estimated that the Ford Ranger was traveling in excess of thirty miles-per-hour, in a fifteen-mile-per-hour zone. Officer Cowan contacted Officer Lane, who was parked nearby, and told him to watch out for the Ford Ranger. Officer Lane saw the Ford Ranger drive toward him and used his speed radar device to determine that the Ford Ranger was driving between twenty-seven and thirty miles-per-hour, in the fifteen-mile-per-hour zone.

¶6 Around 9:12 p.m., Officer Lane stopped the Ford Ranger. Officer Lane approached the vehicle and determined that Ranta was the driver. Officer Lane noticed that Ranta had bloodshot eyes and that his breath smelled of alcohol.

¶7 Officer Lane administered three field sobriety tests. First, Officer Lane administered the walk-and-turn test. Officer Lane testified that Ranta passed the test but exhibited one of eight clues of intoxication—he failed to touch heel to toe on one of the eighteen steps. Second, the officer administered the horizontal gaze nystagmus (HGN) test. Officer Lane testified that Ranta passed the test but exhibited two of six clues of intoxication—both pupils showed jerkiness at maximum deviation. Finally, the officer administered the one-leg-stand test and observed no clues of intoxication.

¶8 Although Ranta passed the field sobriety tests, Officer Lane determined, based on the totality of the circumstances, that there was probable

cause to believe Ranta violated the OWI statute. Officer Lane testified that he reached his determination based in part on the information he received from Officer Cowan regarding the results of the first PBT and his knowledge from training that the rate of dissipation of alcohol is about .02 per hour. Officer Lane administered a second PBT, indicating that Ranta had a blood alcohol content of .11. Officer Lane arrested Ranta for OWI.

¶9 Ranta moved to suppress the results of the second PBT on the ground that Officer Lane lacked probable cause to believe that Ranta violated the OWI statute and therefore lacked authority to administer the second PBT. The court denied the motion. Ranta appeals.

DISCUSSION

¶10 The sole issue presented is whether Officer Lane lacked probable cause to believe that Ranta was operating a motor vehicle in violation of the OWI statute and therefore lacked authority to administer the second PBT. WISCONSIN STAT. § 343.303 provides, in relevant part:

If a law enforcement officer has probable cause to believe that the person is violating or has violated [the OWI statute] ... the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test The result of this preliminary breath screening test may be used by the law enforcement officer for the purpose of deciding whether or not the person shall be arrested for a violation of [the OWI statute].

For purposes of administering a PBT, “‘probable cause to believe’ refers to a quantum of proof greater than the reasonable suspicion necessary to justify an investigative stop ... but less than the level of proof required to establish probable

cause for arrest.” *County of Jefferson v. Renz*, 231 Wis.2d 293, 316, 603 N.W.2d 541 (1999). A PBT is used as a “screening test before establishing probable cause for an OWI arrest.” *Id.* at 307. To determine whether an officer had “probable cause to believe,” we consider the totality of the circumstances known to the officer at the time the PBT was administered, taking into account the officer’s training and experience. *See State v. Kutz*, 2003 WI App 205, ¶¶11-12, 267 Wis. 2d 531, 671 N.W.2d 660. We will uphold the circuit court’s findings of fact unless clearly erroneous. *Renz*, 231 Wis. 2d at 316. Whether those facts meet the probable cause to believe standard is a question of law subject to de novo review. *Id.*

¶11 The circuit court relied on the following facts in support of its determination that Officer Lane had probable cause to administer the PBT:

- During his first encounter with Ranta, Officer Lane observed that Ranta was belligerent, uncooperative, and loud and that he staggered around the campsite, slurred his speech, and smelled of alcohol.
- Officer Lane was aware that Ranta submitted to a PBT at Officer Cowan’s request, and that the results indicated that Ranta had a blood alcohol content of .156.
- Officer Lane was informed that a Ford Ranger was driving toward him. Officer Lane stopped the vehicle after his speed radar device indicated that the Ford Ranger was traveling at approximately thirty miles-per-hour, in a fifteen-mile-per-hour zone. Officer Lane determined that Ranta was in fact the driver.

- After stopping Ranta for speeding, Officer Lane observed that Ranta smelled of alcohol.
- Officer Lane administered field sobriety tests. Although Ranta passed all of the tests, Officer Lane observed one clue of intoxication on the walk-and-turn test and two clues of intoxication on the HGN test.
- Because only two hours had passed since Officer Cowan administered a PBT indicating that Ranta had a blood alcohol content of .156, and because Officer Lane knew from his training as a police officer that the rate of dissipation of alcohol from a person's blood stream is about .02 per hour, Officer Lane determined that insufficient time had passed for Ranta's blood alcohol content to be under the legal limit of .08.

¶12 We conclude that the circuit court's findings of fact are not clearly erroneous, and that, based on these facts, Officer Lane had probable cause to believe Ranta violated the OWI statute. During his initial encounter with Ranta at the campsite, Officer Lane determined that Ranta "was in no shape to drive" after personally observing Ranta's belligerent, uncooperative, and loud behavior and learning that Officer Cowan administered a PBT that indicated that Ranta had a blood alcohol content of .156, almost twice the legal limit. Two hours after the initial encounter, Officer Lane stopped Ranta for speeding and, based on his personal observations of Ranta and his training as a police officer that alcohol dissipates from a person's blood stream at a rate of approximately .02 per hour, Officer Lane determined that there was probable cause to believe that Ranta's blood alcohol content was greater than the legal limit of .08. Based on an

objective view of the facts, we agree with the circuit court that Officer Lane had probable cause to administer the second PBT to Ranta.

¶13 Ranta makes several arguments, all of which we reject. First, Ranta argues that, when compared to the facts in *Renz*, the facts here do not amount to probable cause to believe that Ranta violated the OWI statute. The facts in *Renz* are of little assistance here. In drawing distinctions between the facts in *Renz* and the facts here, Ranta focuses only on the field sobriety test results. However, the field sobriety test results in this case did not provide the primary basis upon which Officer Lane obtained probable cause to administer the second PBT. Rather, as we have indicated, Officer Lane obtained probable cause to administer the second PBT primarily based on his encounter with Ranta at the campsite and based on his observations of Ranta at the time of the traffic stop, just two hours after the initial encounter at the campsite.

¶14 Moreover, the PBT was extremely useful in this case because there were conflicting signs as to whether Ranta was operating a motor vehicle while intoxicated. On the one hand, Officer Lane observed several signs that Ranta was intoxicated, but, on the other hand, Ranta successfully completed the field sobriety tests. Officer Lane had probable cause to administer the second PBT despite Ranta's performance on the field sobriety tests because successful completion of the field sobriety tests does not "subtract from a common-sense view" of the facts based on the totality of the circumstances. *State v. Felton*, 2012 WI App 114, ¶10, 344 Wis. 2d 483, 824 N.W.2d 871. Indeed, an officer may ask a person to submit to a PBT based on signs of intoxication without even asking the person to perform any field sobriety tests because field sobriety tests "are not needed to establish probable cause." *Id.*

¶15 Ranta next argues that Officer Lane could not base his probable cause determination on Ranta's aggressive demeanor at the campsite because an officer may consider a defendant's behavior only at the time of the stop, and Ranta was cooperative at the time Officer Lane stopped him. Ranta misses the point. Whether there is probable cause to administer a PBT is based on an objective view of the totality of the circumstances known to the police officer at the time the PBT is administered, and not based on the officer's "subjective assessment or motivation." *Kutz*, 267 Wis. 2d 531, ¶12. In any event, a defendant's "innocent behavior" at the time of the stop does not automatically negate an officer's probable cause determination. *See Felton*, 344 Wis. 2d 483, ¶10. While Ranta's behavior at the campsite may not alone have been enough to establish probable cause to administer the second PBT, we conclude that Officer Lane could consider Ranta's aggressive demeanor at the campsite in making his probable cause determination because it was one of the facts known to Officer Lane at the time he administered the PBT indicating that Ranta was intoxicated.

¶16 Ranta further argues that Officer Lane could not consider the results of the first PBT because Officer Lane was not present when Officer Cowan administered the PBT and therefore had no personal knowledge as the results of the PBT. Again, we disagree. An officer may rely on hearsay information and the collective knowledge of the officer's entire department in determining whether there is probable cause to believe the defendant violated the OWI statute. *See State v. Wille*, 185 Wis. 2d 673, 683, 518 N.W.2d 325 (Ct. App. 1994). Accordingly, we conclude that Officer Lane was permitted to consider the information he received from Officer Cowan regarding the results of the first PBT in making a probable cause determination, regardless whether he had personal knowledge of the results of the PBT or proof of its accuracy.

¶17 Finally, Ranta argues that the circuit court improperly considered Officer Lane's testimony about the rate of dissipation of alcohol. Ranta argues that an expert is needed to testify about the rate of dissipation of alcohol and Officer Lane is not an expert. We disagree for two reasons. First, Ranta cites to no authority holding that an expert is needed to testify about the rate of dissipation of alcohol from a person's blood stream. Second, in determining that there was probable cause to administer the second PBT, Officer Lane could consider his training and knowledge on this topic gained through his experience as a police officer. *See Kutz*, 267 Wis. 2d 531, ¶12.

CONCLUSION

¶18 Based on the foregoing reasons, we conclude that Officer Lane had probable cause to administer the second PBT, and, based on the results of the second PBT, Officer Lane had probable cause to arrest Ranta for OWI. Accordingly, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

